

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SIERRA CLUB,

Plaintiff,

ORDER

v.

08-cv-664-bbc

LISA P. JACKSON, in her official
capacity as Administrator, United
States Environmental Protection Agency,

Defendant.

The parties have filed a joint motion for the court's entry of a consent decree in this case. Dkt. #19. Having reviewed the consent decree, I have noted one problem. The parties ask the court to enter final judgment in the case (or dismiss it with prejudice) and retain jurisdiction to enforce any future settlement disputes. The Court of Appeals for the Seventh Circuit has held that these two goals are incompatible. "A settlement agreement, . . . unless jurisdiction to enforce the agreement is retained (meaning that the suit has not been dismissed with prejudice), is enforced just like any other contract." Lynch v. SamataMason, Inc., 279 F.3d 487, 489 (7th Cir. 2002); see also White v. Adams, 2009 WL 773877, *1 (7th Cir. Mar. 25, 2009); Blue Cross Blue Shield Association v. American

Express Company, 467 F.3d 634, 636 (7th Cir. 2006); Shapo v. Engle, 463 F.3d 641, 643 (7th Cir. 2006) (“A[] serious problem is the conjunction of dismissal with prejudice with retention of jurisdiction to enforce the settlement agreement.”). Therefore, I cannot dismiss the suit with prejudice and terminate federal jurisdiction and at the same time retain jurisdiction to enforce the parties’ settlement. Shapo, 463 F.3d at 643.

At this point, there appear to be two options. First, the court can dismiss the case with prejudice but not retain jurisdiction over future settlement disputes, requiring the parties to file a separate suit in the appropriate court to enforce their contract. Second, the court can dismiss the case without prejudice and retain jurisdiction over the settlement agreement. I will give the parties until June 10, 2009 in which to consider the issue and advise me on how they wish to proceed.

Entered this 27th day of May, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge